



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: OCTOBER 18, 2022

IN THE MATTER OF:

Appeal Board No. 624277

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective April 8, 2022, on the basis that the claimant voluntarily separated from employment without good cause and, in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to April 8, 2022 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed June 17, 2022 (), the Administrative Law Judge sustained the initial determination of misconduct and did not rule on the alternate determination of voluntary

leaving of employment without good cause.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statements submitted by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was employed as a senior court officer for the Unified Court System, providing security and protection for employees and the

public, for approximately 24 years until on or about November 24, 2021.

On September 10, 2021, the employer informed non-judicial personnel, including the claimant, they needed to be vaccinated against COVID-19 by September 27, 2021, unless otherwise approved for a medical or religious exemption. The policy provided that employees who failed to comply would be prohibited from reporting to work and could be subject to disciplinary action up to and including termination of employment. The claimant did not apply for a medical exemption and no medical professional advised him to forego the COVID-19 vaccine. The claimant applied for a religious exemption. The application instructed the claimant to "provide a personal written and signed statement detailing the religious basis for your vaccination objection ... the religious principles that guide your objections to vaccination, and the religious basis that prohibits the COVID-19 vaccination." The claimant did not provide an explanation of how his religious beliefs were related to his request for an exemption from being vaccinated. His request was denied by the employer's vaccination exemption committee. On November 9, 2021, the employer advised the claimant to submit proof of the first dose of the vaccination by close of business on November 23, 2021, and proof of the second dose within the medically recommended time frame. The claimant did not comply with the vaccine requirement and was not permitted to work beyond November 24, 2021, when he began paid leave.

On March 21, 2022, the claimant was informed that he was not in compliance with the employer's vaccination mandate, that he had 14 days to comply with the vaccination mandate, and that failure to comply by the close of business on April 4, 2022 would result in the termination of his employment. The claimant refused to become vaccinated, citing religious beliefs and safety concerns. On April 7, 2022, the employer ended the claimant's employment because he did not become vaccinated.

**OPINION:** The credible evidence establishes that the claimant's employment ended on April 7, 2022, because he refused to become vaccinated. Although the claimant contended he had a religious objection to receiving the vaccine, his exemption application did not provide the employer with an adequate explanation of the connection between the religious belief and his desire not to receive the vaccine. After the employer denied this request, the claimant knew he needed to be vaccinated to maintain his employment. Under these circumstances, the claimant's personal objection to receiving the vaccine is non-compelling and does not outweigh the employer's interest in attempting to

protect the health and safety of its employees and the public from the spread of COVID-19.

Further, even if the claimant had articulated a religious reason as to why he could not be vaccinated, the Board has previously found a claimant's contention in this regard unpersuasive in the context of a failure to comply with an employer's vaccine requirement. In Appeal Board No. 622828, the Board applied a compelling interest test (citing *Sherbert v. Verner*, 374 U.S. 398 [1963]) and found that the employer's policy, which furthered the compelling governmental interest of combatting the virus and protecting the health and safety of its employees and the public, was justified and reasonable. In finding the claimant's refusal to get vaccinated constituted a voluntary quit without good cause, the Board noted that "the Supreme Court of the United States has held that '... an individual's religious beliefs [do not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate' (see *Employment Div. v. Smith*, 494 U.S. 872, 879 [1990])." The same is true here. Given the neutrality of the employer's vaccine requirement, and the compelling governmental interest behind it, it was not improper for the employer to enforce this general health requirement on employees and the claimant's refusal, even if on religious grounds, is unpersuasive.

Moreover, we are not persuaded by the claimant's contention that his concerns, namely that the vaccine would alter his DNA, should excuse his behavior, as the claimant did not apply for a medical exemption and was not advised by a medical professional to avoid being vaccinated.

Under these circumstances, the employer's decision to deny the claimant's request was not unreasonable. His choice not to become vaccinated was a voluntary act that brought about his separation from employment. The claimant has failed to establish a compelling reason for his failure to comply with the employer's reasonable directive. Accordingly, we conclude that the claimant voluntarily separated from his employment without good cause. In view of our decision, it is not necessary to rule on the alternate determination of misconduct.

**DECISION:** The decision of the Administrative Law Judge is modified as follows and, as so modified, is affirmed.

The initial determination, disqualifying the claimant from receiving benefits,

effective April 8, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

As the claimant is disqualified on the basis of voluntary separation from employment without good cause, there is no need to rule on the alternate determination of misconduct.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER